

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 8 and 11-36 are now pending in this application. Claims 1-7 (“use”) have been cancelled in favor of claim 8. New claims 11-36 represent various embodiments of the invention which were first introduced in original claims 1-7 or represent further limitations thereof. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE OBJECTIONS TO THE CLAIMS HAVE BEEN OVERCOME

The objections to claims 1-10 have been overcome in light of the above amendments.

III. THE 35 U.S.C. 112, 2nd PARAGRAPH REJECTION HAS BEEN OVERCOME

Claims 1-7 and 10 were rejected as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention and have been overcome in light of the above amendments.

IV. THE 35 U.S.C. 102(b) REJECTION HAS BEEN OVERCOME

1. **Claims 1-7 and 10 were rejected as allegedly being anticipated by Heinrich et al.** (U.S. Patent 5,733,847 – “Heinrich”). The applicants request reconsideration of this rejection for the following reasons.

As claim 8 was not rejected over Heinrich, it is presumed that Heinrich was not deemed to have anticipated the applicants’ claimed invention of a method for increasing the weed control of one or more aryloxyphenoxypropionate herbicides (A). As claims 1-7 have been cancelled in favor of additional method claims (claims 11-36) which are all ultimately dependent upon claim 8, it is presumed that these claims are also not anticipated by Heinrich.

2. **Claims 1-10 were rejected as allegedly being anticipated by Rösch et al.** (U.S. Patent 5,700,758 – “Rösch”). The applicants request reconsideration of this rejection for the following reasons. As claims 1-7, 9 and 10 have been cancelled, the applicants focus their attention on the rejection as it applies to claim 8 and new claims 11-36.

The applicants claimed invention now pending is directed toward a method for *increasing the weed control* of one or more aryloxyphenoxypropionate herbicides (A). However, Rösch is directed toward a different invention, i.e. the use of their compounds of formula (I) – which has some overlap with the applicants’ described “compounds (B)” in the claims – in order to provide a *safening effect* to crops against the phytotoxic effects of herbicides.

In order to establish a holding of anticipation, MPEP 2131 illustrates the requirements necessary to establish anticipation, each and every element set forth in the claim must be found, either expressly or inherently described, in a single prior art reference¹ and that the identical invention must be shown in as complete detail as is contained in the applicants’ claim². *See MPEP 2131.*

As the claims are directed toward a method of use and not a composition, neither requirement for anticipation is established by Rösch. There is no indication that Rösch recognized that the combination of a compound (B) herbicide with another herbicide would have resulted in increasing weed control, i.e. *causing* an action on the *weeds*; Rösch is trying to *prevent* an action, i.e. phytotoxic effects on a *crop*.

Even if there had been this awareness from within the Rösch reference, there was no direction as to which specific herbicide (in this case an aryloxyphenoxypropionate) should have been selected to achieve the increase in weed control.

As every element of the applicants’ claimed method has not been taught by Rösch nor have the elements been taught to show the identical invention in as complete detail contained in the applicants’ claim, Rösch does not anticipate the applicants’ claimed method of increasing weed control.

¹ See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

² See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
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